



As You Sow

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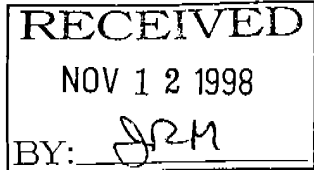
A NON-PROFIT CORPORATION

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November 6, 1998



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Re: Headwaters HCP/SYP Comments
Permit Nos: PRT-828950
SYP Reference No: 96-002

Gentlemen,

Attached is a copy of comments that I intended to make at the public hearing which was held last night in Oakland. I was outraged at many aspects of the hearing process, not the least of which was the refusal of the committee to take my oral comments during the hearing, despite the fact that I arrived more than half an hour prior to the announced start time, and filled out and submitted a speaker card with my request to make comments on behalf of the AS YOU SOW FOUNDATION, for which I serve as Executive Director.

I have appeared at several hundred public hearings of various sorts as a public citizen and on behalf of numerous organizations, and this is the first instance I can recall where the public has been arbitrarily cut off from giving testimony, because of a preset hearing completion hour. Certainly the committee moderator, from the Department of Interior's Solicitor office, could have announced at the outset that testimony would end at 9:00 sharp, so that persons waiting to testify would have some notice that not everyone would or could be heard. Instead, the moderator simply stated abruptly that "IT'S 9:00. THAT CONCLUDES THIS HEARING" and the entire committee panel quickly left the stage and exited through

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a back door! The Fish and Wildlife personnel who had been at the information tables in the back of the room had already left, so there was no-one present, apart from Oakland Police Department Officers, to take a complaint about this callous treatment of public citizens who wished to partake of participatory democracy. It was one of the rudest displays by public officials that I have ever witnessed.

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Of even greater concern was the appearance of bias on the part of the participating agencies. At the U.S. Fish and Wildlife information tables were State and Federal agency personnel to answer questions. The literature being distributed at those tables was limited to the following: (1) a five-page document, evidently prepared by U.S. Fish and Wildlife Service, entitled "The Headwaters Draft EIS/EIR — Questions and Answers"; (2) a 4-page informational brochure-type document entitled "Habitat Conservation Plan & Sustained Yield Plan", which although not clearly labeled as such, was a propaganda piece prepared by the permit applicant, Pacific Lumber Company, in support of its plan; and (3) a Pacific Lumber Company Press Release dated 11/5/98, (the hearing date), entitled "Most Comprehensive Habitat Conservation Plan/Sustained Yield Plan Subject of EIR/EIS Hearing In Oakland." All three documents were misleading at best.

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Written materials prepared on behalf of organizations expressing criticism of the Pacific Lumber Company's HCP/SYP, such as the Environmental Protection Information Center and the Sierra Club, were relegated to tables outside, where it was dark, cold, and at times, raining.

A review of the "Questions And Answers" document provided by the USFWS reveals the degree to which the Service has failed its public mission of impartiality. There are two telling questions presented in that document: WHY ARE THE STREAM BUFFERS ONLY 30 FEET WIDE? and, WHY DOESN'T THE HCP INCLUDE PROACTIVE MANAGEMENT OR PROMOTE RECOVERY OF THREATENED AND ENDANGERED SPECIES?, which go to the very heart of the inadequacies of the HCP/SYP as written. The "answers" to those questions, allegedly drafted by Fish and Wildlife Service personnel, could very well have been written by lawyers or spin-meisters in the employ of Pacific Lumber Company.

Given those facts, it was discouraging to have taken precious time from work, to leave early and fight traffic, so as to arrive in Oakland early in order to sign up to speak before the hearing commenced, and then attend and sit through a hearing that evidently was a sham. To have been prevented from speaking, and to

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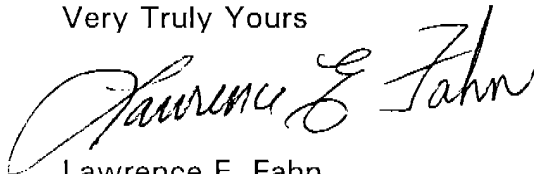
witness the lack of interest displayed by the hearing panel was disheartening at best. California citizens deserve and expect more from their public servants.

Although the prevailing attitude among legislators, policy makers and bureaucrats alike seems to be "It (the negotiated Headwaters deal, including A.B.1986) is the best deal possible for these ancient forest lands, we might as well accept it as a reasonable compromise," the purpose of the public hearing process was to take a close look at the environmental impacts of the transaction, with a particular emphasis on the adequacy of the HCP/SYP under federal and state law.

Public comments on the plans is not an exercise simply for show. These hearings should be taken seriously. The appropriate solution to the problem of too many speakers wanting to comment should have been to (1) insure that persons speaking on behalf of an organization be given some priority; (2) reduce the time allowed each speaker (i.e from 3 to 2 minutes); and, (3) extend the hearing by an hour or two to accommodate everyone wishing to participate.

I am cautiously optimistic that the written comments submitted to the panel on this matter will be read by someone. I am not at all certain that they will be given any serious consideration, let alone be given significant weight. If they were, in view of the serious inadequacies of their plan, Maxxam Corp. and Pacific Lumber Company would have their plans and permits denied and sent back to the proverbial drawing board.

Very Truly Yours



Lawrence E. Fahn
AS YOU SOW FOUNDATION
Executive Director

cc: Senator Diane Feinstein
Senator Barbara Boxer
Governor-elect Gray Davis
Senator John Burton
Assemblyman Antonio Villaraigosa

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COMMENTS OF LARRY FAHN AND THE AS YOU FOUNDATION
TO THE HEADWATERS FOREST HCP/SYP

November 5, 1998

Members of the Committee,

My name is Larry Fahn and I serve as Executive Director of the AS YOU SOW Foundation, which is based in San Francisco. We are a small educational foundation with a relatively broad mission of holding corporations accountable to complying with environmental and consumer protection law. AS YOU SOW has been involved in public education on issues involving toxic chemical exposure, and resource preservation, including the ecological resources present and the aesthetic, biological, and recreation values worth preserving in the magnificent Headwaters Forest.

As you know, the Endangered Species Act is our nation's only statute that has attempted to confront the biodiversity crisis facing the country.

Accelerated habitat destruction was the very problem which the act was written to address more than twenty-five (25) years ago. It is interesting to remember that the Act was signed into law by then President Richard Nixon, one of the most conservative presidents this century.

As public servants dealing with forestry and wildlife issues every day, you are no doubt aware of the importance of the ESA, and its practical enforcement difficulties. But you may not have looked at some of its important language in recent weeks.

As you go about the business of evaluating the HCP/SYP submitted by this applicant, please keep in mind the simple preamble to the Endangered Species Act. It reads:

"The Congress finds and declares that various species of fish, wildlife, and plants in the United States have been rendered

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extinct as a consequence of economic growth and development untempered by adequate concern and conservation; other species of fish, wildlife and plants have been so depleted in numbers that they are in danger of or threatened with extinction; these species... are of esthetic, ecological, educational, historical, recreational and scientific value to the Nation and its people."

Our concerns about this plan are many. We are discouraged that the buffer zones protecting streams and rivers are woefully inadequate. The "best available science" addressing the issue (i.e. FEMAT prescriptions) seems to have been ignored altogether. Not only are the so-called "buffer zones" seriously deficient, the plan allows limited logging in the buffers themselves! Significant scientific testimony on this issue has been presented by a wide array of certified experts.

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We are discouraged that the Interim Hillslope Management protocol is pathetic, and can, and no doubt will, result in future destruction from heavy rains endemic to the area that will cause landslides, and debris torrents, which will further diminish water quality and threaten the survival of the coho fishery.

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We are discouraged that the plan allows excessive road construction, inadequate drainage structures, and road maintenance activities that will seriously degrade waterways and add unacceptable sediment increases to salmon spawning streams. Allowing 400 miles of new road construction in this region, even during winter rain season is shameful. The limited monitoring and enforcement provisions associated with the roadbuilding activities is pitiful.

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We are discouraged that the watershed assessment is clearly deficient. The stream survey data is incomplete and outdated, such that it provides a terribly misleading characterization of the true habitat conditions. The USFWS and California Department of Fish and Game should require their own field biologists to confirm critical scientific testimony in this regard. Updated and better verified stream surveys should be required before taking action on this HCP/SYP. Verifying the existence of functioning instream restoration structures, which are believed to have been destroyed in the heavy rains during 1997 and 1998, seems imperative.

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We are discouraged that the rate of logging, 32% higher than growth during the first decade of the plan will produce profound biological changes in the landscape. The contemplated conversion of vast acreage from Redwood to

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Douglas Fir forestland seems ill-advised for a myriad of reasons, not the least of which is the impact to the habitat of the endangered species in the region which are so dependent on the old growth stands.

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We are discourage that the plan calls for extensive "fuel removal" that can and will further jeopardize murrelet and owl populations.

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These subjects have been fully briefed by an array of scientific experts who have challenged the adequacy of the "science", so selectively relied on by the applicant. We are discouraged that based on documents prepared by the U.S. Fish and Wildlife Service, the Service seems to have accepted the applicant's faulty science even before hearing from interested citizens and organizations. The "Questions and Answers" distributed by the Service appears to be a thinly disguised defense of the HCP/SYP, which could have been drafted by Pacific Lumber Company lawyers. In partial response to the very central question of WHY ARE THE STREAM BUFFERS ONLY 30 FEET WIDE?, the Service's reply is misleading at best: It states, in part, "The level of stream shading and the potential contribution of large woody debris provided by these buffers is quite substantial." Very few of those with expertise in the field would agree. The science supportive of that, and dozens of other statements in the plan is simply woeful. It makes a mockery of the very process.

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We are discouraged that all of the best scientists and testimony, written and oral, from hundreds of knowledgeable citizens and organizations will in all likelihood be ignored and the plans approved. We hope that we will be wrong.

As you complete you task of evaluating the HCP/SYP, AYS would urge you to give the benefit of doubt to the language of the ESA preamble. If in doubt, place the esthetic, the ecological, the historic, the recreational, and the scientific values over and above those financial spoils that these lands and ancient trees offer to the landowner, a Texas corporation that has little concern about those values that we in California share. When you do that, you will have no trouble deciding to deny the pending HCP/SYP of this applicant.